

of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at One Lafayette Centre, 1120-20th Street NW., 9th Floor, Washington, DC 20036-3419.

[51 FR 32015, Sept. 8, 1986, as amended at 58 FR 26065, Apr. 30, 1993]

§ 2200.107 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

[57 FR 41688, Sept. 11, 1992]

§ 2200.108 Official Seal of the Occupational Safety and Health Review Commission.

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987]

Subpart H—Settlement Part

SOURCE: 64 FR 8246, Feb. 19, 1999, unless otherwise noted.

§ 2200.120 Settlement part.

(a) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$200,000 or greater and notices of contest by employers which are determined to be suitable for assignment under this section for reasons deemed appropriate by the Chief Administrative Law Judge.

(b) *Proceedings under this Part.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest or at such other time as he deems appropriate the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (a) of this section. The Chief Administrative Law Judge shall either act as or appoint a Settlement Part Judge, who shall be a Judge other than the one assigned to hear and decide the case, to conduct proceedings under the Settlement Part as set forth in this section.

(c) *Powers and duties of Settlement Part Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(3) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue or may enter other orders as appropriate to facilitate the proceedings.

(4) The Judge may allow or suspend discovery during the time of assignment.

(5) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(d) *Settlement conference*—(1) *General.* The Settlement Part Judge shall convene and preside over conferences between the parties. All settlement conferences shall be held in person. The Judge shall designate a place and time of conference.

(2) *Participation in conference.* The Settlement Part Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Part Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Part Judge so that he may properly

guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Part Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.41.

(3) *Confidentiality.* All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Part Judge shall if necessary issue appropriate orders in accordance with § 2200.11 to protect confidentiality. The Settlement Part Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or maintained by the Settlement Part Judge, and no communications between the Settlement Part Judge and the Chief Administrative Law Judge including the report of the Settlement Part Judge under paragraph (f) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery of subpoena. The Settlement Part Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Part Judge shall not file or cause to be filed

in the official case record any material in his possession relating to these proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Part Judge.* (1) The Settlement Part Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at such time that he determines further negotiations would be fruitless. If the Settlement Part Judge has not made such a determination and a settlement agreement is not achieved within 120 days following assignment of the case to the Settlement Part Judge, the Settlement Part Judge shall then advise the Chief Administrative Law Judge in writing of his assessment of the likelihood that the parties could come to a settlement agreement if they were afforded additional time for settlement discussions and negotiations. The Chief Administrative Law Judge may then in his discretion allow an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Part Judge has not approved a full settlement pursuant to § 2200.100, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Part Judge or Chief Administrative Law Judge for appropriate action on the remaining issues.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of a Settlement Part Judge or a particular Judge and any decision by the Settlement Part Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

Subparts I-L [Reserved]

Subpart M—E-Z Trial

SOURCE: 60 FR 41809, Aug. 14, 1995, unless otherwise noted.

§ 2200.200 Purpose.

(a) The purpose of the E-Z Trial subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are as follows.

- (1) Complaints and answers are not required.
- (2) Pleadings generally are not required. Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.
- (3) The Secretary is required to provide the employer with certain informational documents early in the proceeding.
- (4) Discovery is not permitted except as ordered by the Administrative Law Judge.
- (5) Interlocutory appeals are not permitted.
- (6) Hearings are less formal. The Federal Rules of Evidence do not apply. Instead of briefs, the parties will argue their case orally before the Judge at the conclusion of the hearing. In many instances, the Judge will render his or her decision from the bench.

§ 2200.201 Application.

The rules in this subpart will govern proceedings before a Judge in a case chosen for E-Z Trial under § 2200.203.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 14822, Mar. 28, 1997; 62 FR 40934, July 31, 1997]

§ 2200.202 Eligibility for E-Z Trial.

(a) Those cases selected for E-Z Trial will be those that do not involve complex issues of law or fact. Cases appropriate for E-Z Trial would generally include those with one or more of the following characteristics:

- (1) Relatively few citation items,
 - (2) An aggregate proposed penalty of not more than \$10,000,
 - (3) No allegation of willfulness or a repeat violation,
 - (4) Not involving a fatality,
 - (5) A hearing that is expected to take less than two days, or
 - (6) A small employer whether appearing pro se or represented by counsel.
- (b) Those cases with an aggregate proposed penalty of more than \$10,000, but not more than \$20,000, if otherwise appropriate, may be selected for E-Z Trial at the discretion of the Chief Administrative Law Judge.

[62 FR 40934, July 31, 1997]

§ 2200.203 Commencing E-Z Trial.

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for E-Z Trial.

(b) *Party request.* Within twenty days of the notice of docketing, any party may request that the case be assigned for E-Z Trial. The request must be in writing. For example, "I request an E-Z Trial" will suffice. The request must be sent to the Executive Secretary. Copies must be sent to each of the other parties.

(c) *Judge's ruling on request.* The Chief Judge or the Judge assigned to the case may grant a party's request and assign a case for E-Z Trial at his or her discretion. Such request shall be acted upon within fifteen days of its receipt by the Judge.

(d) *Time for filing complaint or answer under § 2200.34.* If a party has requested E-Z Trial or the Judge has assigned the case for E-Z Trial, the times for filing a complaint or answer will not run. If a request for E-Z Trial is denied, the period for filing a complaint or answer will begin to run upon issuance of the notice denying E-Z Trial.

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 61012, Nov. 14, 1997]